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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,891

05/31/2005

Rupert Christian Scheiner

22409-00275-US

2406

30678

7590

08/03/2009

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EXAMINER

BAYS, PAMELA M

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

08/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/516,891

Applicant(s)

SCHEINER, RUPERT CHRISTIAN

Examiner

Pamela M. Bays

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 14-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. This Office Action is responsive to the Amendment filed on 12 May 2009. As directed by the Amendment: Claims 1, 6-10, 12, 14-15, 17, 19, 21-22, 24, and 29 have been amended, and Claims 11 and 13 have been cancelled. Thus, Claims 1-10, 12, and 14-29 are presently pending in this Application.
2. The amendments to the Specification are accepted by the Examiner.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. ***Claims 1-10, 12, 14-16, 19, 22, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Liautaud (US Patent No. 4,322,585).***
5. Regarding Claims 1-4 and 12, Liautaud discloses a clothing attachment device for an external component of a hearing prosthesis (Abstract), the attachment device comprising an elongate pin member integrally connected to (Col. 2, Lines 40-45) and extending outwardly from a casing to a distal end (Fig. 3), adapted to pass through at least a portion of an item of clothing (Fig. 3); an engagement housing (Fig. 5) having disposed therein a plurality of non-spherical, metallic ("conductive", inherently metallic, Col. 2, Lines 53-60) engagement members (32, 38, 39) collectively adapted to receive at least a portion of the elongate member and releasably engage with said engagement

members (Fig. 5, Col. 2, Lines 45-65); and an unlocking device configured to release said elongate member from said non-spherical engagement members when said elongate member is engaged to said engagement members (Col. 2, Lines 60-65), wherein at least one of said elongate member and said receiving engagement housing is configured to be mounted to the external component (Fig. 3).

6. Regarding Claim 5, Liautaud discloses a clothing attachment device further wherein the elongate member comprises a head and a pin member extending from the head to a distal end (Figs. 3 and 5, head is where the pin connects to the casing).

7. Regarding Claims 6-8, Liautaud discloses a clothing attachment device further wherein the engagement housing is mounted to a casing of the external component (Fig. 3, housing 32 is mounted to casing by engaging with the pin), and further wherein the engagement housing comprises an orifice extending into the engagement housing (Fig. 5) from a front surface thereof, the orifice being able to receive at least a portion of the length of the elongate member (Col. 2, Lines 40-50), wherein the orifice extends from the front surface to a chamber within the engagement housing (Figs. 3, 5).

8. Regarding Claim 9, Liautaud discloses a clothing attachment device further wherein the chamber of the engagement housing has an inner wall of which at least a portion thereof is frusto-conical such that the chamber expands in diameter away from the front surface of the engagement housing (Fig. 5, engagement means and chamber expand outward conically).

9. Regarding Claim 10, Liautaud discloses a clothing attachment device further comprising a pin engagement mechanism that frictionally engages the pin member on

insertion of the pin member through the orifice and into the chamber (Fig. 5, Col. 2, Lines 40-60).

10. Regarding Claims 14 and 15, Liautaud discloses a clothing attachment device further wherein the engagement members are normally biased in an engaging configuration within the chamber (Fig. 5, spring push engagement members against the pin), wherein a biasing means (the spring) is positioned within the chamber which, when in its relaxed condition, displaces the plurality of engagement members (38, 39) towards the front surface of the engagement housing and into the engaging configuration (Fig. 5).

11. Regarding Claim 16, Liautaud discloses a clothing attachment device further wherein the biasing means is a spring and plate (Fig. 5), the spring being mounted between a rearward end of the chamber and the plate, and the plate being mounted to a forward end of the spring (tip of plates engage the pin, which are biased by the springs, Fig. 5).

12. Regarding Claim 19, Liautaud discloses an external component of a medical device (Abstract, an electronic listening system could be medically necessary), the external component comprising at least one processor ("transducer," Col. 2, Lines 30-45) of said medical device disposed adjacent a casing; an engagement housing having disposed therein a plurality of non-spherical engagement members (38, 39) and mounted to the casing (Figs. 3 and 5, housing 32 is mounted to casing by engaging with the pin); and an elongate member adapted to pass through at least a portion of an item of clothing and be received in the engagement housing and releasably engage with said

engagement members (Abstract, Fig. 5, Col. 2, Lines 45-55); wherein the engagement of said elongate member and said engagement housing is releasable by an unlocking device ("finger release tabs", Col. 2, Lines 59-65).

13. Regarding Claim 22, Liautaud discloses an external component of a medical device (Abstract, an electronic listening system could be medically necessary), the external component comprising at least one processor of said medical device disposed adjacent a casing ("transducer," Col. 2, Lines 30-45); an elongate member extending outwardly from the casing and adapted to pass through at least a portion of an item of clothing (Fig. 5); and a receiving means adapted to receive at least a portion of the elongate member and releasably engage therewith (Fig. 5, Col. 2, Lines 45-60); wherein the engagement of said elongate member and said receiving means is releasable by an unlocking device ("finger release tabs", Col. 2, Lines 59-65).

14. Regarding Claim 24, Liautaud discloses an external component of a medical device (Abstract, an electronic listening system could be medically necessary), the external component comprising an elongate member (36, Fig. 5); at least one processor of said medical device disposed in said external device ("transducer," Col. 2, Lines 30-45); a retaining means for frictionally retaining at least one portion of the elongate member in a first configuration and for releasing the at least one portion in a second configuration (opened and closed tabs, Fig. 5, Col. 2, Lines 52-65); and a biasing means (springs, Fig. 5) for biasing the retaining means into the first configuration (Fig. 5); wherein the retaining means is incorporated into the external component (attached together through pin and engagement features, Figs. 1, 3, 4) to enable the external

component to be fastened to an item of clothing worn by a user of the external component (Abstract), when the retaining means is frictionally retaining the said at least one portion of the elongate member (Fig. 5, Col. 2, Lines 45-65).

15. Regarding Claim 25, Liautaud discloses an external component further wherein the elongate member is releasable from the retaining means by momentarily counteracting the biasing means to cause the retaining means to assume the second configuration (finger release tabs cause engagement members to momentarily release the pin in the second open configuration, Col. 2, Lines 45-65), wherein the biasing means are spiral springs (Fig. 5).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 17, 18, 20, 21, 23, 26-28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liautaud in view of de Jong (US Patent No. 4,280,256).

18. Regarding Claims 17, 21, 26, 27, 28, Liautaud discloses all of the claimed elements as described above, including an external component of a medical device (Abstract, an electronic listening system could be medically necessary), the external component comprising at least one processor of said medical device disposed adjacent a casing ("transducer," Col. 2, Lines 30-45); an elongate member having a pin member

adapted to pass through at least a portion of an item of clothing (Fig. 5); with a chamber having an inner wall, of which at least a portion is frusto-conical such that the chamber expands in diameter away from a front surface of the engagement device (Fig. 5), the pin engagement device also having a spiral spring acting and mounted between a rearward end of the chamber and a plate (Fig. 5), but does not disclose that the engagement device has a plurality of magnetic spheres disposed in a circular arrangement within a non-magnetic chamber, and wherein the spring is adapted to urge the plate against the spheres within the chamber; wherein an orifice is formed in the engagement device to enable entry of the pin member into the chamber and thereafter frictionally engage with the plurality of spheres, the engagement of the pin being releasable by a magnet acting on said plurality of magnetic spheres and having a magnetic field of a strength sufficient to overcome the bias provided on the spheres by the spring and so cause the spheres to move rearwardly relative to the chamber. De Jong discloses a faster with a head and an elongate member that is intended to pierce an article of clothing (Fig. 1, Col. 1, Lines 1-30), with magnetic spheres disposed in a circular arrangement (Figs. 2-3) within a non-magnetic chamber (chamber is hollow, therefore inherently non-magnetic), wherein a spring 13 is adapted to urge the plate 14 against the spheres within the chamber (Fig. 1), and wherein the spherical members frictionally engage the pin member in a chamber (Fig. 1), and wherein the engagement of the pin being releasable by a magnet acting on said plurality of magnetic spheres and having a magnetic field of a strength sufficient to overcome the bias provided on the spheres by the spring and so cause the spheres to move rearwardly relative to the

chamber ("removed by a special apparatus which comprises a strong magnet for pulling the balls clear of the pin," Col. 1, Lines 22-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to use any known engagement means such as magnetic spheres to releasably engage the pin member as taught by de Jong, in the hearing device disclosed by Liautaud, in order to securely lock the pin, and unlock it only with a special tool, and because Liautaud discloses that in this device, "many types of retaining clips may be employed" (Col. 2, Lines 50-53), and "mechanical details for the engagement members may vary since these ... are well known" (Col. 2, Lines 60-65).

19. Regarding Claims 18, 20, 23, and 29, Liautaud discloses a hearing prosthesis wherein an external portion is removably clipped to the user's clothing, and all of the other claimed elements as described above, except wherein the hearing prosthesis is a cochlear implant. However, it is well known in the art that the external parts of cochlear implants are commonly attached to the user's clothing and even the Applicant's Specification states, "the external speech processor unit is typically... removably clipped on the clothing" (Paragraph 4, Fig. 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the fastening means as described by Liautaud or de Jong as a fastening means for a cochlear implant, because it would have been obvious to use any known removable fastening means to achieve the same function as the clips for cochlear implants that are well-known in the art.

Response to Arguments

20. The rejection under USC 112 has been overcome due to the Applicant's amendments to Claim 29.
21. Applicant's arguments with respect to Claims 1-10, 12, and 14-29 have been considered but are moot in view of the new ground(s) of rejection necessitated by the Applicant's Amendment.
22. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning in using any type of known fastener in a cochlear implant, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. The Applicant admitted that pins and fasteners to connect cochlear implants were well known in the art, and thus it would have been well-known to use any known type of fastener, such as ones disclosed by Liautaud or de Jong. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela M. Bays whose telephone number is (571) 270-7852. The examiner can normally be reached on Monday-Friday, 9am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/
Supervisory Patent Examiner, Art Unit 3766

/P. B./
Examiner, Art Unit 3766